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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/771,239	01/26/2001	Jeffrey Bruce Lotspiech	ARC920010006US1	6974

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EXAMINER

DAVIS, ZACHARY A

ART UNIT

PAPER NUMBER

2137

DATE MAILED: 02/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/771,239

Applicant(s)

LOTSPIECH ET AL.

Examiner

Zachary A Davis

Art Unit

2137

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 07 December 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY [check either a) or b)]**

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 1, 3-30.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☒ Other: See Continuation Sheet

  
**ANDREW CALDWELL**  
**SUPERVISORY PATENT EXAMINER**

Continuation of 5. the request for reconsideration does NOT place the application in condition for allowance because:

Applicant's arguments are not persuasive.

Applicant disagrees that the exhibit filed with the declaration under 37 CFR 1.131 fails to disclose limitations of Claims 8-11, 18, 19, and 28; however, Applicant does not specifically point out in the exhibit where these limitations are disclosed. Further, Applicant argues that even if an element of a dependent claim has not been shown to predate the Yoshida reference, the independent claim elements incorporated into the dependent claim render the dependent claim patentable. The Examiner respectfully disagrees; if Applicant has not shown conception of specific limitations in a claim prior to the date of the Yoshida reference, then the claim as a whole is still considered to have only the benefit of the filing date of the present application, and therefore the Yoshida reference may still be applied to such claims. The date of earliest priority is determined by the claim as a whole, and is considered on a claim by claim basis.

Regarding the rejection of Claims 1 and 3 under 35 U.S.C. 102(e) as anticipated by Schwenk, Applicant disagrees with Examiner's statement in the previous Office action that "finding an intersection of two sets necessarily divides and removes". Applicant further alleges that the Examiner must provide evidence supporting that assertion. However, the Examiner believes that, with reference to such an elementary operation as finding the intersection of sets, the burden of proof remains with the Applicant to show that finding the intersection of sets does NOT divide or remove.

Regarding the rejection of Claims 4-30 under 35 U.S.C. 103(a), Applicant has not further addressed the Examiner's responses to Applicant's previous arguments, which were set forth in the previous Office action.

Continuation of 10. Other: The declaration filed under 37 CFR 1.131 will not be entered because it was not seasonably presented. The declaration was not received prior to a final rejection as per condition A in MPEP § 715.09, nor does it meet the conditions C.2 or 3 of the same section.